

Remarks:

In an Office Action dated January 10, 2005, the Examiner imposed a further restriction, to wit:

“Applicant is required to elect a species of the solid surface among a countertop, a sink, a lavatory, a desktop, a table top, a chair and a windowsill.

“Applicant is required under 35 U.S.C. 121 to elect a single disclosed species of the flat non-porous unitary matrix, a single disclosed species of the visible layer, and a single disclosed species of the solid surface, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.”

Applicant has elected to pursue the polymethylmethacrylate species of the flat non-porous unitary matrix, the textile as the disclosed species of the visible layer, and sink as the disclosed species of the solid surface, retaining the right of traverse. To that end, Applicant has withdrawn Claims 3, 4, 18, 40, 42 through 46, 48, 51, 54 through 59, 63, 67, 74, 77 through 83, and 86 through 91.

Applicant has not amended the Markush claims in accord with MPEP 803.02 Restriction-Markush Claims, to wit: “If the members of the Markush group are sufficiently few in number or so closely related that a search and examination of the entire claim can be made without serious burden, the examiner must examine all the members of the Markush group in the claim on the merits, even though they are directed to independent and distinct inventions. In such a case, the examiner will not follow the procedure described below and will not require restriction.

The Applicant traverses based upon the nature of the claimed invention being suitably claimed in a generic independent claims as a sheet of a first thermoplastic non-copolyester polymeric material. There are two criteria for a proper requirement for restriction between patentably distinct inventions:



(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); and

(B) There must be a serious burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).

According to the MPEP, Examiners must provide reasons or examples to support conclusions, but need not cite documents to support the restriction requirement in most cases. For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. No such *prima facie* showing has been made in this case.

Applicant respectfully reminds the Examiner of the admonition set forth in MPEP 803.01 “Review by Examiner with at Least Partial Signatory Authority,” to wit:

“Since requirements for restriction under 35 U.S.C. 121 are discretionary with the Commissioner, it becomes very important that the practice under this section be carefully administered. Notwithstanding the fact that this section of the statute apparently protects the applicant against the dangers that previously might have resulted from compliance with an improper requirement for restriction, IT STILL REMAINS IMPORTANT FROM THE STAND-POINT OF THE PUBLIC INTEREST THAT NO REQUIREMENTS BE MADE WHICH MIGHT RESULT IN THE ISSUANCE OF TWO PATENTS FOR THE SAME INVENTION. Therefore, to guard against this possibility, only an examiner with permanent or temporary full signatory authority may sign final and non-final Office actions containing a final requirement for restriction, except that an examiner with permanent or temporary partial signatory authority may sign non-final Office actions containing a final requirement for restriction.”

Similarly, each of the restrictions made by the Examiner, such as the requirement restriction to a single disclosed species of the solid surface, the Applicant respectfully posits that the distinction, say, between a countertop and a window sill is not patentably distinct. Indeed, it is hard to imagine that an Examiner would not find the countertop anticipated by the windowsill and cite the windowsill against the countertop.



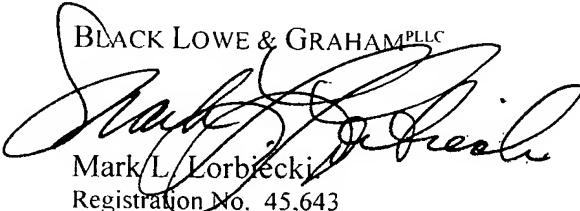
For the reasons set forth herein, the Applicant strongly traverses the restriction requirement as set forth by the Examiner. It is the Applicant's position that the generic group thermoplastic non-copolyester polymeric material sufficiently states a relationship that defeats both of the two criteria for restriction, that the invention be both independent and distinct. In that the restriction has not separated families of claims but rather distinct dependent claims depending from the same independent claim contradicts the requirement that the restricted claims be independent.

Conclusion:

Applicant submits that Applicant has fully complied with the restriction requirement, has elected suitable species, and has suitably traversed the restriction requirement. Applicant requests that the Examiner direct any questions raised by this Response to Office Action to the Applicant's attorney, the undersigned.

Respectfully submitted,

BLACK LOWE & GRAHAM PLLC


Mark L. Lorbiecki
Registration No. 45,643
Direct Dial: 206.903.1800